

LABOUR DEPARTMENT

The 16th December, 1986

No. 9/9/86-Lab./10700.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Jyoti Engg. Works, Mohana Road, Ballabgarh :—

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 81/1984

between

SHRI NANU KHAN WORKMAN, C/O DHARAM PAL YADAV, INTUC OFFICE, NAHAR SINGH MARKET, BALLABGARH AND THE MANAGEMENT OF M/S JYOTI ENGG. WORKS, MOHANA ROAD, BALLABGARH.

Present.—

Shri R.C. Sharma, A. R. for the workman.
Shri G.S. Chaudhary, A.R. for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Nanu Khan workman and the Management of M/s Jyoti Engineering Works, Mohana Road, Ballabgarh to this Tribunal for adjudication :—

Whether the termination of service of Shri Nanu Khan was justified and in order? If not, to what relief is he entitled?

2. On receipt of order of reference, notices were issued to the parties, who appeared. The case of the petitioner is that he was employed with the respondent factory since 16th August, 1971 as Fitter-cum-Milling Man. He was getting Rs. 1025 per month. His services were terminated w.c.f. 19th October, 1983 and he was not allowed to join duty. He challenged the termination of his services on the ground that the termination has been effected without complying with mandatory provisions of the Industrial Disputes Act, 1947 and termination of his services is against the principle of natural justice. He prayed that he be reinstated with all back wages.

3. The respondent contested the claim of the petitioner. The Management's plea is that they never terminated his services but he himself has abandoned the job and thereafter has taken full and final payment on 15th December, 1980 and as such there is no industrial dispute between the parties. It was pleaded that the workman had left the services by his own sweet will for his betterment and thereafter he was gainfully employed with other concerns. A plea was also taken that the respondent firm is registered under Punjab Shops and Commercial Establishments Act, 1958 and as such the workman cannot raise this industrial dispute and this Tribunal has got no jurisdiction to entertain and try the present dispute.

4. The workman reiterated his stand in the replication and he also controverted the pleas taken in the written statement by the respondent.

5. On the pleadings of the parties following issues were framed by Shri R.N. Batra, the then Presiding Officer, Industrial Tribunal, Faridabad :—

- (1) Whether the claimant abandoned his job and took his full and final account on 15th December, 1980 ? OPM
- (2) Whether the Tribunal has no jurisdiction to try the present dispute as pleaded? OPM
- (3) Whether the termination of service of Shri Nanu Khan was justified and in order? OPM

6. I have heard Shri R.C. Sharma, learned Authorised Representative for the workman and Shri G.S. Chaudhary, learned Authorised Representative for the Management and gone through the material on record. My findings on the aforesaid issues are as under :—

Issue No. 1 :

7. Shri Nanu Khan workman deposed that he was employed with respondent factory in 1971. He denied having abandoned the job in 1980. He produced slips Ex. W-1 to W-11 to show that he worked in the factory after 1980. He stated that he was turned out from factory on 19th October, 1983 by the Management and the Management told him that they were not in a position to pay him wages.

8. Shiv Dutt WW-2 deposed that he worked with Jyoti Engg. Works from 10th March, 1981 to 3rd July, 1981 as Turner and also saw Nanu Khan working there in that period.

9. On the contrary, Harish Breja MW-1 partner of the respondent factory deposed that Nanu Khan worked in their factory from 1st June, 1975 to 15th December, 1980 and he had left the services of his own accord and collected all his dues in full and final settlement of his claim and had signed receipt Ex. M-1 in his presence. He also stated that the claimant had worked in V.K. Industries, Faridabad and also with M/s Lalde Pvt. Ltd., and produced certificates Ex. M-3 and M-4 to substantiate his stand.

10. MW-2 Shri Nand Kishore proved certificate Ex M-3 to show that the claimant had worked in their factory from 8th February, 1981 to 12th July, 1981. MW-3 Shri Som Nath Aggarwal, Handwriting & Finger Prints Expert deposed that disputed signatures and writing Q-1 to Q-3 on receipt Ex M-1 tallied with Nanu Khan, admitted signatures and specimen signatures on other documents S-1 to S-5. He proved his report Ex. M-12.

11. Bir Abhimanu Banga MW-4 proved certificate Ex. M-4 to show that the claimant worked in their factory from 1st September, 1981 to 9th December, 1981.

12. It would be seen that the workman's plea is that he had been working in the respondent factory up till 12th October, 1983 whereas the Management's stand is that he had abandoned the job in August, 1980 and thereafter he received his full and final account on 15th December, 1980,—vide receipt Ex. M-1. Out of these conflicting stands, the stand of the Management is worthy of credence for the following reasons:—

- (i) There is no documentary proof with the workman to show that he worked with Jyoti Engg. Works after 3rd August, 1980. Rather the respondent had conclusively established that Nanu Khan worked with V.K. Industries from 8th February, 1981 to 12th July, 1981.—vide receipt Ex. M-3 and with Laldee Pvt. Ltd., from 1st September, 1981 to 9th December, 1981,—vide certificate Ex. M-4 proved by the testimony of Shri Nand Kishore MW-2 and Bir Abhimanu MW-4. Ex. M-7 is the E.S.I. Card of Nanu Khan claimant pertaining to the period he worked with M/s V.K. Industries as per evidence of Nand Kishore MW-2. Faced with such situation, the workman could not deny that he had not worked with these concerns. He stated thus in his testimony as WW-1 "I worked in V.K. Industries and Laldee Pvt., Ltd. because I was sent by the respondent-management to do the job.

* * * *

I did not work continuously in V.K. Industries from 8th February, 1981 to 12th July, 1981 but I used to go there for some period as and when told by the respondent factory. I received wages from V.K. Industries because the respondent-management has told me that they had sent my wages there.

* * * *

I worked in Laldee Pvt. Ltd. from 1st September, 1981 to 9th December, 1981 but not continuously".

The above lines from his statement clearly prove that Nanu Khan worked with these concerns after relinquishing his job with the respondent. His explanation that he worked with these concerns at the instance of the respondent is nothing but issue of lies. He was paid by these concerns. His admission that he worked with these concerns totally demolishes his stand that he was working with the respondent upto 19th October, 1983. It is worth noting that he has taken the plea in the demand notice, dated 25th October, 1983 that he worked up to 19th October, 1983, but strangely enough he did not reiterate his stand in the claim statement. He had not mentioned in the claim statement upto which period he had worked in Jyoti Engg. Works.

- (ii) The other interesting feature of the case is that Nanu Khan admitted in his cross-examination that he worked with M/s Uttam Fabricators during years 1981 to 1983. He wants the Tribunal to have it believed that Uttam Fabricators and Jyoti Engg. Works are under the management and control of same proprietor. His stand in this aspect cannot be believed. He does not know who is the proprietor of M/s Uttam Fabricators. Invitation card Ex. W-12 and Electricity Bill Ex. W-13 itself do not show that M/s Jyoti Engg. Works and M/s Uttam Fabricators are managed by the same person. It cannot be inferred from these documents that these two factories are in fact part and parcel of single unit.
- (iii) It may also be highlighted that Nanu Khan obtained experience certificate when he left the job with Jyoti Engg. Works. The copy of the said certificate Ex. W-19 was procured by him from the Management. This certificate shows that Nanu Khan had worked with M/s Jyoti Engg. Works from 2nd June, 1975 to 3rd August, 1980. Nanu Khan has stated that this certificate is false one but it remains mystery and it has not been explained by him how this certificate is false one. This certificate clearly shows that on abandonment of job with Jyoti Engg. Works, the workman got this certificate to seek employment elsewhere.

13. The aforesaid circumstances clearly establish that Nanu Khan had not worked with Jyoti Engg. Works after 3rd August, 1980 rather he had worked after it with different concerns.

14. An other important piece of evidence which strengthens the views that he abandoned the job is receipt Ex. M-1. This receipt is signed by him and it is amply established from the testimony of MW-1 Harish Breja and Handwriting and Finger Print Expert Som Nath MW-3 that receipt bears the signatures of Nanu Khan. Mere denial on the part of the workman about his signatures on receipt has no significance. The workman has not examined any handwriting expert to rebut evidence led by the Management. This receipt Ex. M-1 clearly shows that the workman had settled his claim with the Management and nothing is due to him from the Management. It is also worth noticing that stand of the respondent has consistent throughout. They had taken such stand even in the conciliation proceedings and copies of conciliation proceedings are Ex. M-5 and M-6.

15. The workman has produced slips Ex. W-1 to W-11 to show that he had worked with Jyoti Engg. Works after August, 1980. These slips do not advance the case of the workman. The genuineness of these slips is doubtful. Nanu Khan's version is that these slips are signed by Sunder Breja and Harish Breja. Harish Breja who came into witness box as MW-1 categorically denied that these slips bear his signatures. The genuineness of these documents is not established. Moreover, these slips seem to have been forged at later stage. These documents were not produced at the earliest opportunity during the conciliation proceedings before Labour-cum-Conciliation Officer and no explanation is forthcoming why these documents were not produced at the earliest opportunity. Likewise post card Ex. M-15 is addressed to Nanu Khan at the address of Uttam Fabricators. The photostat copies of the attendance register also pertain to Uttam Fabricators. Hence these documents Ex. W-15 to W-17 do not advance the plea of the workman that he worked with Jyoti Engg. Works after August, 1980.

16. Learned Authorised Representative of the workman contended that there is no question of estoppel, acquiescence and waiver or abandonment on the part of the workman even if he had received his wages. In support of his contention, he placed reliance on rulings reported as *Workmen of Subong Tea Estate versus Subong Tea Estate and Another*, 1964-I-LLJ-333, *bennett coleman and Co. (Private) Ltd. versus Punya Priya Dass Gupta*, 1969 II-LLJ-554 and *Pallavan Transport Corporation (Metro) Madras-2 versus Presiding Officer I, Additional Labour Court, Madras T.K.*, 1984-II-LLJ-page 132. His argument has got no merit. The receipt Ex. M-1 is clear. It clearly shows that the workman settled the account and nothing was due from the respondent. He made writing on the receipt with his own hands. This receipt clearly spells out intention of the workman about relinquishment/abandonment of his job, when the same is considered with other set of circumstances noticed above.

17. It is true that to constitute abandonment of service, there must be total or complete giving up of duty so as to indicate his intention not to resume the same. It is question of fact to be determined in the light of surrounding circumstances of each case. In our instant case, the various set of circumstances noticed above clearly reveal that the workman had intention not to resume duty with the respondent and that he had abandoned services with the respondent voluntarily in August, 1980. His stand that he has been working with Jyoti Engg. Works upto 19th October, 1983 is falsified by the circumstances noticed above. Hence I hold that Nanu Khan abandoned the job with the respondent and thereafter took his full and final account on 15th December, 1980. The issue is answered in favour of the Management.

Issue No. 2:

18. Ex. M-2 is the copy of the registration certificate. This document shows that the respondent firm is covered by the provisions of Shops and Commercial Establishments Act, 1958 (hereinafter referred to as the Shops Act). Harish MW-1 Partner of the respondent has proved this document and deposed that their establishment is registered under the Punjab Shops and Commercial Establishments Act, 1958.

19. On the contrary, the workman stand is that the respondent used to employ more than 10 workers in his factory and provisions of Shops Act do not apply to the respondent establishment. He placed reliance upon the photostat copies of the attendance register Ex. W-18 of the respondent firm pertaining to July, 1980 wherein the number of workers is shown to be 10. Besides this he examined Shiv Dutt WW-2 who deposed that about 20/30 workers were employed in the respondent factory.

20. On scrutiny of the evidence led by both the sides I find that the stand of the respondent deserves to be accepted. The respondent establishment is governed by the provisions of Shops Act as is apparent from the document Ex. M-2. The version of the workman that the respondent establishment comes within the definition of the factory as defined in section 2-(m) of the Factories Act cannot be accepted. It has not been established that 10 or more workers had worked in the respondent factory in preceding 12 months. The authenticity of the photostat copy of the attendance register Ex. M-18 has not been proved. The workman has not summoned the record of the respondent establishment to show that entries in Ex. M-18 were correct. He could not explain satisfactorily how he obtained the copy of the attendance register. It is worth to note that Nanu Khan admitted in cross-examination that E.S.I. and Provident Fund Scheme are not applicable in Jyoti Engg. Works i.e. respondent concern and no deduction about these items were made from his salary. The workman has also stated in

cross-examination that Sarvshri Dharambir, Gobind Singh, Sat Pal and Jagan Singh were in the employment of Jyoti Engg. Works with him. This shows that there was not more than 5 workers in the employment of respondent factory. Harish Proprietor of the respondent firm MW-1 categorically deposed that their establishment is registered under the Punjab Shops and Commercial Establishments Act, 1958. There is no reason to disbelieve the respondent because his stand is supported by Ex. M-2. The testimony of Shiv Dutt WW-2 that there were 20/30 workers in the factory cannot be accepted because he has not been able to show by any cogent proof that he had worked in Jyoti Engg. Works for about 4 months. Hence I hold that the respondent firm is covered by the provisions of Shops Act.

21. The present dispute was raised by the workman under section 2-A of the Industrial Disputes Act, 1947. The provisions of Shops Act relating to the termination of service of the employee of the Shop Establishment have to prevail over section 2-A of the Industrial Disputes Act as held by full Bench in case of *Visakha Patham Dt. Marketing Co. Op. Society and Govt. of A.P. and others*, 1977-II-LLJ-332, where it was held as under:—

“If there is any repugnancy between the Shops Act and the I.D. Act, the Shops Act must prevail in the State by reason of Art. 254(2) of Constitution to the extent of the repugnance.”

For the reasons referred above, the present dispute is to be decided in the light of provisions of Shops Act. Even if it is held that there was wrongful termination of services of the employee Nanu Khan under section 22 of the Shops Act, the employees can claim compensation equivalent to two months salary, in case he is removed from service in contravention of the provisions contained in Shops Act. He is not entitled to reinstatement on that ground. For such view support is sought from the decision in case of *The Nawanshahr Central Cooperative Bank Ltd. Versus The Presiding Officer, Labour Court, Jullundur*, 1980 (3) S.L.R., page 358 (Punjab and Haryana High Court).

22. In view of the aforesaid discussion, I hold that the employee at the most is entitled to claim compensation equivalent to two months salary even if his services were illegally terminated and that this Tribunal has no jurisdiction because respondent establishment is covered under the Shops Act. The issue is decided in favour of the management.

Issue No. 3 :

23. In view of my findings on issue No. 1, there is no termination of the service of the workman rather he himself had abandoned the job. Thus there does not arise any question of termination of services being unjustified.

24. In the result, I hold that Nanu Khan claimant is not entitled to any relief and the present reference is accordingly dismissed. The award is passed accordingly.

Dated the 30th October, 1986.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 681, dated 30th October, 1986.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/9/86-6Lab./10701.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. East India Cotton Manufacturing Co. Limited, N.I.T. Faridabad :—

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 461/1983

between

SHRI AMAR NATH BHATIA WORKMAN AND THE MANAGEMENT OF M/S EAST INDIA COTTON MANUFACTURING COMPANY LIMITED, N.I.T. FARIDABAD

Present :—

Shri S.N. Sharma for the workman.

Shri Jaswant Singh for the Management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Amar Nath Bhatia, Workman C/o Bhartiya Mazdoor Sangh, Vishwakarm Bhawan, Faridabad Town, Faridabad and the Management of M/s East India Cotton Manufacturing Company Limited, N.I.T., Faridabad to this Tribunal for adjudication :—

Whether the termination of service of Shri Amar Nath Bhatia is justified and in order? If not, to what relief is he entitled?

2. After receipt of reference, notices were issued to the parties. Both the parties appeared. The case of petitioner is that he was employed with the respondent on 9th October, 1973 as Clerk. His services were placed at the disposal of Cooperative Consumer Store with effect from 9th February, 1981 and he worked there as per direction of the Company. He has alleged that the respondent has stopped marking his presence in the register with effect from 21st September, 1982 and the Company had also not paid him salary after that date. He challenged the action of the respondent company and prayed that he should be reinstated with all back wages.

3. The case is contested by the respondent Company. It was pleaded in the written statement that there was no relationship of master and servant between the claimant and the Management. The claimant has resigned on 12th May, 1980 which was accepted by the Management on the same date and thereafter there was no question for the claimant to report for duty or for the management to mark his attendance after 12th May, 1980. The plea was also taken that the claimant had been gainfully employed and as such, he is not entitled to any relief.

4. On the pleadings of the parties, the following issues were framed by Shri R.N. Batra my predecessor :—

- (1) Whether the claimant himself resigned and that his resignation was accepted on 12th May, 1980?
- (2) Whether the claimant is gainfully employed? OPM
- (3) Whether the termination of service of Shri Amar Nath Bhatia was justified and in order? If not, to what relief is he entitled?

5. I have heard Shri S.N. Sharma learned Authorised Representative for the workman and Shri Jaswant Singh learned Authorised Representative of the Management and gone through the evidence on the record. My findings on the aforesaid issues are as under :—

Issue No. 1 :

6. Om Parkash MW-1, Time Office Incharge of the Company deposed that the claimant tendered resignation Ex. M-1 and the said resignation was accepted by Shri O.P. Ahuja, Personnel Manager of the Company and thereafter the claimant got his clearance slip Ex. M-2. The claimant also submitted another application Ex. M-3 for clearing his duties. He also deposed that Cooperative Consumer Store was not part of East India Cotton Manufacturing Company and the Store is registered under the Cooperative Societies Act. In cross-examination he clarified that the claimant resigned from East India Cotton Manufacturing Company Limited when he joined Cooperative Consumer Store, but he could not tell whether the dues of the claimant were finally settled when he tendered his resignation.

7. The claimant himself came in the witness-box as WW-3. He stated that he was employed in respondent factory on 9th October, 1973 as Time Office Clerk. He was transferred to Consumer Store and no letter was issued. He worked in Consumer Store upto 21st September, 1982 and thereafter his attendance was not marked. He served demand notice in January, 1983 when he was not allowed to join duty. He also stated that Shri Ram Avtar and Ram Sarup also worked in the Consumer Store. He deposed that sale-proceeds of the Consumer Store were deposited with the Cashier of East India Company and that all purchases of the Store were made on the basis of cheque issued by the company. He denied having tendered resignation on 12th May, 1980. In cross-examination, he clarified that entire affairs of the Store were looked after by the respondent Company.

8. Besides this WW-2 Shri Rameshwar Dass, Head Clerk, Regional Provident Fund Commissioner, Faridabad stated that provident fund of Shri Amar Nath Bhatia claimant was deposited from 1st August, 1974 to 31st January, 1981 by East India Cotton Manufacturing Company Limited Faridabad.

9. Ram Avtar WW-1 deposed that he also remained in service of Consumer Store of East India Cotton Manufacturing Company. He stated that the Management of M/s. East India Cotton Manufacturing Company Ltd. is the controlling authority of Textile Consumer Store and that Textile Consumer Store is the Unit of the Company.

10. On careful Scrutiny of the evidence led by both the parties, I am of the view that the version put forth by the Management that Shri Amar Nath Bhatia has resigned on 12th May, 1980 is not correct. The respondent Company had been deducting provident fund of the employee Amar Nath Bhatia upto 31st January, 1981. This fact has been amply established from the testimony of Rameshwar Dass WW-2, Head Clerk, Provident Fund Commissioner. Had Amar Nath Bhatia resigned on 2th May, 1980, there was no question of deducting provident fund from his salary upto January, 1981. It is worth while to point out that the claimant submitted an application for issuance of direction to the Company for production of documents i.e., attendance register, salary register, provident fund register and E.S.I. contribution register pertaining to the period from May, 1980 to January, 1981. These registers were not produced by the Company on the ground that these registers were not traceable. It appears that the respondent company intentionally did not want to bring these documents as their production would have falsified their stand that the claimant resigned in May, 1980. From these documents, the claimant wanted to establish that he worked with the respondent even after May, 1980. Hence stand of the claimant is obviously worthy of credence. Moreover, the Personnel Manager before whom the alleged resignation was submitted, was not examined by the respondent company to show that the resignation letter was actually submitted before him. Even Om Parkash MW-1 could not deny that the claimant worked with the respondent company upto December, 1980. He gave evasive reply on this aspect saying that he was not aware of position whether the claimant worked upto December, 1980. Had the claimant actually resigned in May, 1980 all his dues would have been paid by the Management, but this was not done. Thus the only inference which can be drawn from these circumstances is that the claimant was working with the respondent company after even May, 1980. Hence the version of the Management that the claimant has resigned in May, 1980 is obviously false and must be discarded.

11. The plea was taken that the claimant was employed in the Textile Cooperative Consumer Store which has a separate legal entity and that East India Cotton Manufacturing Company have no control over it. In other words the Management wanted to show that the claimant ceased to be its employee when he joined Store in February, 1981. This plea of the Management also cannot be accepted. There is ample oral evidence that Amar Nath Bhatia WW-3 and Ram Avtar WW-2 which show that the Textile Consumer Store was being managed and looked after by the respondent company. The goods were purchased with the fund provided by East India Cotton Manufacturing Company and the sale-proceeds were deposited with the Company. Even Om Parkash MW-1 could not deny this position when he stated that he did not know where the sale-proceeds of the Consumer Store were deposited and whether these were deposited with the Cashier of East India Cotton Manufacturing Company. It appears that Consumer Cooperative Store was under the Management and Control of East India Cotton Manufacturing Company even if it had separate entity. This fact is also evident from the letter Ex. W-2 whereby services of Ram Sarup Salwan were placed on deputation to Textile Consumer Store. Had the Textile Consumer Store been not under the control and the Management of M/s East India Cotton Manufacturing Company, the Company would not have sent its employee to work in the Store. By deputing an employee to work in the Store, the employee never ceased to be its employee. Hence I conclude that the claimant has not resigned on 12th May, 1980 as pleaded by the Management. The issue is answered against the Management.

Issue No. 2:

There is no evidence that the claimant was gainfully employed after 21st September, 1982 because no evidence on this aspect was led by the Management to establish its case. Hence this issue is also answered against the Management.

Issue No. 3:

12. The respondent Company has stopped marking attendance of the employee without any valid reason and such action on the part of the Company amounts to illegal termination of service of the claimant. In the result, it is held that the termination of service of Amar Nath Bhatia is neither justified nor in order.

13. In view of the above discussion, it is hereby directed that the Management should take back Amar Nath Bhatia on duty and give him all back wages and benefit of continuity of service. There shall be no order as to cost. Reference is answered accordingly.

Dated, the 30th October, 1986.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Ends. No. 682, dated the 30th October, 1986.

Forwarded (four copies) to the Financial Commissioner & Secretary to Govt. Haryana, Labour & Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 29th January, 1987.

No. 9/1/87-6Lab./185.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and Management of M/s Kuldip Jasawal Shanker Card Board, Industrial Area, Plot No. 71, Panchkula (Ambala): —

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA.

Ref. No. 177-of 1985

SHRI BABU LAL, WORKMAN AND THE MANAGEMENT OF THE MESSRS KULDIP JASAWAL, SHANKER CARD BOARD, INDUSTRIAL AREA, PLOT NO. 71, PANCHKULLA (AMBALA)

Present.—

Shri Harnek Singh for workman.
Shri R.L. Chopra for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of its powers conferred,—vide clause (c) of sub-section (i) of section 10 of Industrial Disputes, Act, 1947 referred dispute between Shri Babu Lal, workman and Messrs Kuldip Jasawal, Shanker Card-Board, Industrial Area, Panchkulla to this Court. The terms of the reference are as under :

Whether termination of service of Shri Babu Lal is just and correct, if not, to what relief is he entitled?

Workman through his demand notice alleged that he had been in the service of respondent-management for 21 months. His services were terminated in violation of section 25 (F) of Industrial Disputes Act, 1947. He prayed for his reinstatement with continuity in service and with full back wages.

Respondent-management contested the dispute and contended that workman left the service of the respondent thereafter; he raised Industrial Dispute before the Labour Officer, Ambala. Where a settlement was arrived under section 12 (3) of the Industrial Disputes Act. According to that it was settled that the workman shall receive Rs. 200 and shall leave his all the claims against the management. So it was prayed that workman is not entitled to any relief against the management.

On the pleadings of the parties, the following issues were framed : —

Issues

1. Whether termination order in question regarding the services of workman is incorrect & illegal; if so, its effect? OPM
2. Whether statement of claim has not been properly signed and verified by workman; if so its effect? OPM
3. Whether authority letter in favour of A.R. workman is not proper; if so, its effect ? OPM
4. Whether Labour Court has got no jurisdiction to try this dispute as alleged in para No. 4 of preliminary objection? OPM
5. Relief ?

I have heard Authorised Representatives of the parties and have perused the oral and documentary evidence placed on the file. My issuewise findings are as under :

Issue No. 1 :

In support of this issue workman appeared as AW-1 supported his case and stated that compromise between the parties was arrived at Photostat copy of the same is Ex-A. Photostat copy of voucher regarding the payment is Ex-A-2,—vide which Rs. 200 were paid to Shri Jaginder their Authorised Representative. But no relief was given to him.

Respondent-management did not examine any witness in view of admission of the workman regarding the settlement arrived at between the parties.

In view of the above evidence and admission of the workman, I am of the considered view that Shri Babu Lal admitted this fact that their Authorised Representative was Shri Joginder in whose presence settlement was arrived at between the parties. Copy of the same is Ex-A-1 was arrived at between the parties. According to that every workman has to get Rs. 200 each in view of full & final settlement. Accordingly, the management paid Rs. 200 to Shri Joginder, Authorised Representative of the workman. Who further did not make payment of that amount to the workman and that is not the fault of the management. Workman again stated that he neither received settlement amount, nor any other relief. In those circumstances he raised second demand notice on the basis of the same this reference was made to this Court. But I think that when settlement has already been arrived at between the parties regarding their full and final reliefs and payment in view of that settlement has been made. So the workman is debarred from raising second demand notice for the same issues. So this issue is decided, in favour of, management against the workman.

There is no need to discuss issue Nos. 2, 3, 4 because in view of my findings on issue No. 1 these issues have become redundant.

Issue No. 5 Relief :

For the foregoing reasons on the basis of my issuewise findings, I hold that parties have already compromised their dispute under section 12(3) of I.D. Act, so the workman is not at all entitled to any further relief from this court. So I pass award regarding the dispute between the parties accordingly.

Dated, the 28th November, 1986.

P.V. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endst. No. 3281, dated the 28th November, 1986

Forwarded (four copies), to the Financial Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh, as required under section 15 of I.D. Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No. 9/1/87-6Lab./191.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the Management of M/s. Executive Engineer, Tubewell Division No. 1, M.I.T.C., Model Town, Ambala City: —

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT,
AMBALA

Reference No. 322 of 1984
(Old No. 289 of 1983)

SHRI RANJIT KUMAR, SON OF SHRI 'SHIV RAM, C/O SHRI RAJESHWAR NATH, TIMBER MARKET, AMBALA CANTT. AND THE MANAGEMENT OF THE MESSRS EXECUTIVE ENGINEER TUBEWELL DIVISION NO. 1, M.I.T.C., MODEL TOWN, AMBALA CITY

Present: —

Shri Rajeshwar Nath for workman.
Shri Bhagat Singh for respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—vide clause (C) of sub-section (i) of section 10 of Industrial Disputes Act, 1947, referred dispute between Shri Ranjit Kumar and Messrs H.S.M.I.T.C. etc. originally to Labour Court, Faridabad. The terms of the reference are as under :—

Whether termination of services of Shri Ranjit Kumar is just and correct, if not, to what relief is he entitled ?

On Constitution of Labour Court at Ambala in April, 1984, the reference was received by transfer.

Workman alleged that he joined service of respondent management as a Labourer on daily wages in 1977. His services were terminated on 31st May, 1983 in contravention of provisions of section 25(F) of Industrial Disputes Act, 1947. He prayed for his reinstatement with continuity in service and with full back wages.

Respondent-management contested the dispute and contended that reference is not maintainable being malicious and false. Workman worked with the respondent on daily wages from time to time. As soon as the work exhausted with the respondent-management, workman was denied the work and there is no question of terminating the service of the workman because he was not a regular employee of the respondent-management.

Workman filed replication through which he controverted the allegations of the respondent management.

On the pleadings of the parties, the following issues were framed :—

Issues:

- (1) Whether termination order, dated 31st May, 1984 is justified, if not, its effect ? OPM
- (2) Whether reference is not maintainable in the present form ? OPM
- (3) Relief ?

Issue No. 1:

Respondent in support of its case examined Shri Bhagat Singh, S.D.C. who stated that workman Ranjit Kumar was employed with respondent-management on daily wages from October, 1979 to April, 1983 with certain breaks in his service whenever there used to be work with the respondent-management the workman used to be called and provided the work when there was no work with the respondent-management, in those circumstances the workman had to be without work. He tendered into evidence copy of documents is Exhibit M-2 to M-36 which are photostat copies of vouchers,—vide which the payment of wages were made to workman Ranjit Kumar.

Shri Ranjit Kumar was given six or seven opportunities to lead evidence to rebutt the evidence of the management but he neither examined himself nor examined any other witness in support of its case. In fact he absented himself so his evidence is closed under order 17 rule C.P.C.

Management's case is that workman was employed on daily wages this fact was not refuted by the workman. No appointment letter was ever given to the workman because he was employed on daily wages. MW-1 stated that whenever there used to be work in the respondent-management, workman used to be given work, in the absence of any job, the workman remained without work and after April, 1983, there was no work with the respondent-management nor any other person was employed in the place of the workman.

In view of the above evidence, I reach at the conclusion that workman was employed on daily wages due to paucity of work, he was not provided any work, so question of termination of service of the workman does not arise. In fact, the respondent-management is without work and is also not in position to provide any work to the workman, so question of reinstatement of the workman does not arise.

To rebut the evidence of the management, the workman did not appear nor he produced any evidence in the absence of the same the evidence of the management has to be accepted *in toto*. Accordingly, this issue is decided, in favour of, the management against the workman.

Issue No. 2:

In view of my finding on issue No. 1, the reference is not maintainable because there is no work with the management so question of providing any work to the management does not arise. So this issue is also decided, in favour of, management against the workman.

Issue No. 3— Relief:

For the for going reasons on the basis of my findings, I pass award regarding the dispute in hand accordingly.

Dated the 18th November, 1986.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 3191, dated 24th November, 1986.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

No. 9/1/87-6Lab./227.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s General Manager, Milk Plant, Jind.

IN THE COURT OF SHRI V.P. CHAUDHARY, PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 55 of 1986

SHRI SATBIR SINGH, SON OF SHRI KUNDAN, C/O SHRI S. N. VATS, P.O. ROHTAK AND THE MANAGEMENT OF THE MESSRS GENERAL MANAGER, MILK PLANT, JIND

Present :

Shri S. N. Vats, for the workman.

Shri Gulshan Kumar, for the respondent.

AWARD

The Hon'ble Governor of Haryana in the exercise of its powers conferred,—vide clause (C) of sub-section (1) of section 10 of Industrial Disputes Act, 1947 referred dispute between Shri Satbir Singh and Messrs General Manager, Milk Plant, Jind to this Court. The terms of the reference are as under :

“Whether termination of services of Shri Satbir Singh, son of Shri Kundan is just and correct, if not, to what relief is he entitled ?”

Workman through his demand notice alleged that he joined service of respondent management on 3rd October, 1979 as a Diary Man and had been working up till 23rd April, 1983. Thereafter his services were terminated in violation of section 25(F) of Industrial Disputes Act, 1947. He prayed for his reinstatement with continuity in service and with full back wages.

Respondent-management contested the dispute and contended that workman was not in continuous services for more than 240 days in any year. So compliance of provisions of section 25(F) of Industrial Disputes Act was not required in the termination of the workman. He further contended that workman is not entitled to reinstatement.

On the pleadings of the parties the following issues were framed :—

Issues :

1. Whether termination of services of workman is illegal and unjust, if so, its affect ?
2. Relief.

I have heard Shri S.N. Vats for workman and Shri Gulshan Kumar for respondent-management and have perused the oral and documentary evidence placed on the file. My issue-wise findings are as under :—

Issue No. 1 :

In support of this issue workman Satbir Singh appeared as AW-1. He stated on oath that he joined service of respondent management on 3rd October, 1979. His services were terminated on 23rd April, 1983 in violation of provisions of section 25(F) of Industrial Disputes Act. In cross-examination he denied the suggestion that he worked less than 240 days.

Respondent-management was afforded four opportunities to lead evidence but it failed to produce any evidence in support of its defence, so respondent evidence was closed by order.

In view of the above facts and evidence on the file, I am of the considered view that it is not disputed that workman joined service of respondent-management on 3rd October, 1979 and his services were terminated on 23rd April, 1983. However in the written statement respondent-management has taken a plea that his service was less than 240 days but not even a single witness of respondent-management appeared in the witness box to support this version on oath. So this defence of the respondent is meaningless. Accordingly, I hold that workman remained in the service of respondent-management more than 240 days. At the time of terminating his services management failed to comply with the provision of section 25(F) of Industrial Disputes Act, 1947. So termination of services of workman Shri Satbir Singh is illegal and unjust, so this issue is decided, in favour of workman against the respondent-management.

Issue No 2:

For the foregoing reasons on the basis of my findings on issue No. 1, I order their statement of the workman with continuity in service and with full back wages. I pass award regarding the controversy between the parties accordingly.

Dated the 16th December, 1986.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

Endorsement No. 3360, dated the 16th December, 1986.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of Industrial Disputes Act, 1947.

V. P. CHAUDHARY,
Presiding Officer,
Labour Court, Ambala.

The 16th February, 1987

No. 9/4/87-6Lab./224.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s (i) Executive Engineer, Samalkha Sub-Division, Division No. 1, H.S.E.B. Panipat. (ii) The Sub-Divisional Officer, Samalkha Sub-Division No. 1, H.S.E.B., Samalkha, Tehsil Panipat.

BEFORE SHRI S. B. AHUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 127 of 1983

between

SHRI TEJ PAL, WORKMAN C/O SHRI V. K. MODI, B-65/12, RAM NAGAR, KARNAL AND
THE MANAGEMENT OF M/S EXECUTIVE ENGINEER, SAMALKHA SUB-DIVISION,
DIVISION NO. 1, H.S.E.B., PANIPAT (i) THE SUB-DIVISIONAL OFFICER SAMALKHA,
SUB-DIVISION NO. 1, H.S.E.B. SAMALKHA, TEHSIL PANIPAT.

Present :

Shri V. K. Modi, Authorised, Representative for the workman.

Shri Ram Kumar, Clerk for the management.

AWARD

1. In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between Shri Tej Pal, workman and the management of M/s Executive Engineer, Samalkha Sub-Division, Division No. 1, H.S.E.B., Panipat (ii) The S. D. O., Samalkha Sub-Division No. 1, H. S. E. B. Samalkha, Tehsil Panipat to this Tribunal, for adjudication :—

Whether the termination of services of Shri Tej Pal was justified and if not, to what relief is he entitled ?

2. On receipt of reference, notices were issued to the parties when both the parties appeared.

3. The case of the petitioner is that he was working as Helper under the Sub-Division Officer, Samalkha Sub-Division, Division No. 1, H. S. E. B., Panipat. He was drawing Rs. 260 per month. He met with an accident on 30th March, 1981 while on duty and thereafter the Management did not permit him to join duty. He served demand notice under section 2-A praying for reinstatement with continuity of service and backwages. The workman did not file any claim statement and submitted that his demand notice be treated as claim statement.

4. The case contested by the respondent. It was pleaded that the workman was a daily wage labourer and he was paid wages as per rate fixed by the Deputy Commissioner, Karnal and he was paid at the rate of Rs. 10 per day. The workman met with accident on 30th March, 1981 and thereafter he did not submit medical certificate and also did not join his duty. It was pleaded that the services of the workman were never terminated and he is still working as labourer. Pleas were also taken that the reference is bad for non-joinder of necessary party and is not maintainable in view of section 82 of the Electricity (Supply) Act, 1948. It was also pleaded that the reference is premature.

5. On the pleadings of the parties, the following issues were settled by Shri R. N. Batra my predecessor :—

- (1) Whether the reference is premature as pleaded ? OPM
- (2) Whether the reference is not maintainable as pleaded ? OPM
- (3) Whether the reference is bad for non-joinder of necessary parties ? OPM
- (4) Whether termination of service of Shri Tej Pal was justified and in order ? If not, to what relief is he entitled ? OPM

6. I have heard Shri V. K. Modi, learned authorised representative for the workman and Shri Ram Kumar, Clerk on behalf of the respondent H.S.E.B. and perused the record. My findings on the aforesaid issues are as under :—

Issue No. 1, 2 and 3:

7. These issues were not pressed and as such are answered against the Management.

Issue No. 4:

8. Tej Pal WW-1 deposed that he was appointed as a daily wages worker on 1st June, 1980 and worked continuously up to March, 1981. He met with an accident on 30th March, 1981, while on duty. He reported for duty after recovery from illness and was not allowed to join duty by H.S.E.B. He submitted an application Ex. W-1, W-4 and W-6 by post to the Management but no reply was received. He also produced the photostat copy of the discharge certificate Ex. W-9.

9. On the contrary the respondent examined Shri S. K. Jain, Sub-Divisional Officer as MW-1. He deposed that Tej Pal was a daily wage labourer working under them. He met with an accident on 30th March, 1981. He did not produce medical fitness certificate and as such he was not permitted to join duty. He stated that the workman had worked for 220 days in the preceding year prior to 30th March, 1981. He had not brought the copies of pay rolls and attendance sheets to indicate the number of working days.

10. The workman's stand is that he has continuously worked from 1st June, 1980 to March, 1981 whereas the Management's stand is that he joined in August, 1980 and worked up to 30th March, 1981. Even if we take the respondent's stand as elicited in the testimony of Shri S. K. Jain, S. D. O. MW-1 is correct, the workman had worked with the Management from August, 1980 to 30th March, 1981 when he was refused to join duty after the accident. In other words he had worked for more than 240 days. In such circumstance, the service of Tej Pal, workman could not be terminated without complying with mandatory provisions of section 25-F of the Act. The action of the management whereby the workman was not permitted to join duty after the accident cannot be sustained in the eye of law. The workman entitled to be taken on duty after recovery from accident but this was not done. The workman had even sent various letters by post requesting the Management to take him back on duty but all in vain. Hence the termination of his service on 30th March, 1981 by the Management was not justified and in order.

11. During the course of argument it was pointed out by the parties that the workman had been taken on duty by the management with effect from November, 1983 in pursuance of an agreement which took place before the Commissioner under the Workman Compensation Act. The copy of the agreement has not been placed on record by either party. Thus, there is no dispute that the workman is working with the respondent from November, 1983. In other words, the workman remained unemployed from 1st April, 1981 to October, 1983 without any fault on his part. He has been thus deprived of his wages during this period though he has been reinstated. In view of the above discussion I hold that the management should pay in all back wages of the intervening period i. e. from 1st April, 1981 to October, 1983 with benefit of continuity of service. The award is passed accordingly.

Dated the 28th November, 1986.

S. B. AHUJA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.